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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,219	08/26/2003	Robert W. Coulombe	EFQ-108-A-1	5414

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EXAMINER

SWIATEK, ROBERT P

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/649,219

Applicant(s)

COULOMBE, ROBERT W.

Examiner

Robert P. Swiatek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 8-25 and 38-45 is/are allowed.
- 6) ☒ Claim(s) 6, 7, 26, 27, 30, 34, 35 and 46-49 is/are rejected.
- 7) ☒ Claim(s) 28, 29, 31-33, 36 and 37 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schrader et al. (1,212,266) in view of Zeller (US 989,469). The Schrader et al. horseshoe includes a shock-absorbing pad 11 that covers virtually the entire bottom surface of a horse hoof and an embedded metal plate 4 having a plurality of integral clips 5 extending outwardly therefrom. Clips 5 project beyond the periphery of pad 11 and are bent upwardly in use to engage the sidewall of the horse's hoof. Plate 4 of Schrader does not include a traction element extending away from the hoof bottom surface to engage the ground when in use. The Zeller horseshoe, however, includes a reinforcing plate 10 embedded in a body portion 4. Anti-slip members 12 project downwardly from plate 10 and beyond the lower surface of body portion 4 to engage the ground. It would have been obvious to one skilled in the art to provide the embedded metal plate 4 of Schrader et al. with a downwardly-extending traction element, in view of the teaching of Zeller that such an element serves an anti-slipping function. It is noted that instant claim 6 does not state that the shock-absorbing pad is in contact with the horse's hoof when in use, merely that it covers the hoof bottom surface—a limitation the Schrader et al. patent meets. Moreover, the Schrader et al. pad 11 is *adapted* to be sandwiched between a horse's hoof and a metal

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horseshoe. As to claim 7, although the pad 11 of Schrader et al. is not wedge-shaped in longitudinal cross section, it would have been obvious to one skilled in the art to give it a wedge-shaped configuration to make the shoe more comfortable in use or correct for any discrepancy in a horse's stride.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 30, 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Schrader et al. The planar flexure plate 4 of Schrader et al. includes a plurality of openings 6 and is embedded within first elastomeric—rubber—material 11. The material 11 is considered abutable—that is, *capable of abutting*—with the bottom surface of the horse's hoof if the fabric or leather sheet 13 were removed or were otherwise absent. Before the sheet 13 was mated to material 11, for example, the upper surface of material 11 could be placed or held against a horse's hoof.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schrader et al. in view of Smith (US 1,516,508). Although the Schrader et al. horseshoe lacks a toe calk, the Smith patent discloses a cushioned horseshoe 10 having a forward toe calk 14 for “guarding against slipping” (see page 1, lines 54, 55, 68-70, of Smith). It therefore would have been obvious to one skilled in the art to employ a toe calk with the Schrader et al. shoe, in view of the teaching of Smith that enhanced traction is thereby provided.

Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schrader et al. While the use of an aluminum or polyurethane flexure plate *per se* is not disclosed in the Schrader et al. patent, it nonetheless would have been obvious to use aluminum or polyurethane in the composition of the flexure plate in order to reduce weight as well as manufacturing costs.

Claim 46 is rejected under 35 U.S.C. 102(b) as being anticipated by Howell (US 777,022). The Howell horseshoe includes a planar flexure plate 1 having a U-shaped outer periphery 6 and a U-shaped inner edge portion 5; the inner edge portion 5 allows access to the frog portion of the hoof. A curvilinear calk 17 projects downwardly from the plate 1 and is intermediate the outer and inner peripheries of the shoe.

Claim 47 is rejected under 35 U.S.C. 102(b) as being anticipated by Cope et al. (4,207,947). The patent to Cope et al. depicts a horseshoe having a plate 28 with U-shaped outer and inner edges 38, 54, a U-shaped element 36 disposed intermediately of the outer and inner edges 38, 54, and means 34, 102 for affixing the plate to a horse hoof. U-shaped element 36 includes curvilinear stiffening walls 92, 94 and an arcuate, ground-engaging toe calk 80.

Claims 48, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cope et al. The use of polymeric material in the construction of the stiffening walls 92, 94 of Cope et al., not as such disclosed, nonetheless would have been obvious to one skilled in the art seeking to reduce costs.

In claim 47, line 9, "an" should be changed to –and–.

Claims 28, 29, 31-33, 36, 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Applicant's arguments filed 17 May 2004 have been fully considered but they are not persuasive. The application is not believed allowable for the reasons set forth above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

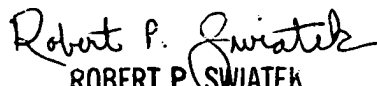
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Claims 46-49 occasioned the new grounds of rejection.

The patent to Sigafoos (US 5,699,861) has been cited to provide an additional example of a horseshoe.

Summary: Claims 1-5, 8-25, 38-45 have been allowed; claims 6, 7, 26, 27, 30, 34, 35, 46-49 have been rejected; claims 28, 29, 31-33, 36, 37 have been objected to.

RPS: 0703/308-2700
6 August 2004


ROBERT P. SWIATEK
PRIMARY EXAMINER
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